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SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE REQUEST)
FOR AGENCY ACTION BY)
PETITIONERS NORTH EMERY)
WATER USERS ASSOCIATION,)
HUNTINGTON-CLEVELAND)
IRRIGATION COMPANY, AND)
CASTLE VALLEY SPECIAL)
SERVICES DISTRICT)

DOGM'S OPPOSITION TO
REQUEST FOR REHEARING
AND MODIFICATION OF
ORDER

Docket No. 94-027
Cause No. ACT/015/025-93B

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The Division of Oil, Gas and Mining, Department of Natural Resources
("DOGM") respectfully submits this Memorandum in Opposition to Castle Valley Special
Services District's Request for Rehearing and Modification of Order dated June 13,
1995, by the Utah Board of Oil, Gas and Mining.

ARGUMENT

The Petitioners, in their request for relief, in their oral presentation and
testimony, and in their closing argument, have always stated that the thesis of their case
and the basis for their prayed-for relief is, in Counsel's own words:

We're here today because we believe that if this Significant Revision to the
Permit is allowed, we're going to experience these impacts.

[contamination, diminution, or interruption of drinking, domestic, or residential water supply from a well or spring in existence prior to an application for surface coal mining or reclamation] We believe the evidence is already there, that some of these impacts are being experienced now. But the mine dewatering, if they continue to mine in the tank seam, will continue in the same method as is happening now. This law will continue to be violated without action by this Board . . . They're asking for a significant revision so they can continue mining in the same area, continue dewatering their mine in the same way they are dewatering their mine now . . . And just because we're having impacts now, the impacts aren't going to go away, they are going to be worse as we get into the tank seam, and continue because they continue every minute while we sit here. 300 gallons of water exit that aquifer, and it's going to happen every minute they are mining the tank seam. (emphasis added).

Transcript, pages 21-22

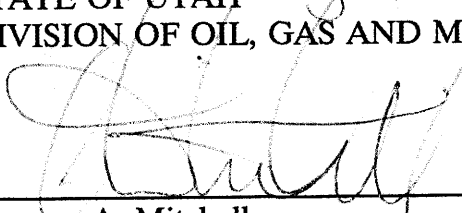
Petitioners have also acknowledged at the hearing that the mining of the tank seam per se will not have an impact on their interest because the tank seam does not intercept the potentiometric surface based upon their theory of the hydrology. Therefore, the only possibly basis for the Petitioner's request that all parties and this Board meet and devote time, energy, and resources to their prayed-for relief must be based upon, in counsel's own words: "The mine dewatering, if they continue to mine in the tank seam, will continue in the same method as it is happening now."

The chairman, in ruling upon the admissibility of Petitioner's evidence concerning mining outside the tank seam, disallowed the evidence, finding it irrelevant as it applied to all matters not encompassed within the Petition. However, within the outlines of the requested relief, the evidence as presented by the Petitioners, and their argument upon the same, the Board's Order concerning the relevance of mining outside the tank seam did not strike the record of 95% of the evidence presented by the Petitioner and the Respondents.

Therefore, the Board's Order was carefully crafted to take into account the noticed prayer for relief, the evidence presented within the parameters of the Board's evidentiary ruling, and within the theory of the Petitioner's case. Petitioners have struggled long and hard to have the Board hear all evidence on the theory of their case, and to avoid having the Board address, in their words, "these issues in a piecemeal and artificial manner," it is unbecoming for the Petitioners now to complain that they have received what they have requested.

RESPECTFULLY SUBMITTED this 10 day of August.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



Thomas A. Mitchell
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing DOGM'S
OPPOSITION TO REQUEST FOR REHEARING AND MODIFICATION OF
ORDER to be mailed by certified mail, on this 11th day of August, 1995, to the
following:

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